

**REFUGEE CAMPS: IN PURSUIT OF A LEGAL DEFINITION AND THE
DELIMITATION OF STATES' OBLIGATIONS***Thaís de Andrade Penalber¹*

ABSTRACT: In the absence of a specific universal regulation on refugee camps, this paper makes reference to existing international human rights rules, which are applicable to every individual subject to the jurisdiction of a State regardless of their place of residence or legal status, including asylum-seekers and refugees. The proposals made here also find support in the “normative interaction” among refugee law, human rights and humanitarian law. In particular, several arguments presented in this paper will be based on the recognized interplay between refugee law and human rights, especially considering that “human rights law fulfills the central function of filling the gaps in protection left by humanitarian and refugee law”.

KEYWORDS: Human Rights; Refugee Law; Humanitarian Law.

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1 INTRODUCTION

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In its Policy on Alternatives to Camps, the United Nations High Commissioner for Refugees (hereinafter UNHCR) estimated that about 40% of all refugees lived in camps in at the time that document was issued.² Although millions of other refugees have settled in formal and informal arrangements in both urban and rural areas, encampment remains a reality especially when other alternatives are not feasible.³ In the absence of a specific universal regulation on refugee camps, this paper makes reference to existing international human rights rules, which are applicable to every individual subject to the jurisdiction of a State regardless of their place of residence or legal status, including asylum-seekers and refugees.⁴ The proposals made here also find support in the “normative interaction”⁵ among refugee law, human rights and humanitarian law. In particular, several arguments presented in this paper will be based on the recognized interplay between refugee law and human rights,⁶ especially considering that “human rights law fulfills the central function of filling the gaps in protection left by humanitarian and refugee law”.⁷

In the second chapter, I will analyze previous formulations concerning the notion of ‘refugee camps’. Considering, however, that such attempts do not provide for a uniform and binding legal basis with regards to these forms of settlements, in the third chapter I elaborate further on elements that would be relevant for establishing an international definition of refugee camps, and in the fourth chapter I delineate obligations that would have to be fulfilled by all host States as well as third countries under this universal definition in order to ensure the protection of camp residents. It is important to point out that the application of the proposals made in this paper could only be envisaged with regards to the establishment of future refugee camps, as it would not be

² UNHCR ‘Policy on Alternatives to Camps’ (22 July 2014) UN Doc UNHCR/HCP/2014/9, p. 4.

³ Id.

⁴ Human Rights Committee, ‘General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant’ (2004) UN Doc CCPR/C/21/Rev.1/Add.13 (hereinafter Human Rights Committee GC31), §10.

⁵ CHETAIL, V., ‘Armed Conflict and Forced Migration: A Systemic Approach to International Humanitarian Law, Refugee Law and Human Rights Law’ in CLAPHAM, A. & GAETA, P. (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford University Press, Oxford, 2013, p. 702.

⁶ “Although refugee law and human rights law were initially conceived as two distinct branches of international law, their multifaceted interaction is now well acknowledged in both state practice and academic writing.” CHETAIL, V., ‘Are Refugee Rights Human Rights? An Unorthodox Questioning on the Relations between International Refugee Law and International Human Rights Law’ in RUBIO-MARIN, R. (ed.), *Human Rights and Immigration*, Collected Courses of the Academy of European Law (Oxford University Press, Oxford 2014), p. 19.

⁷ CHETAIL, V., ‘Armed Conflict ...’, at p. 703.

practically feasible to expect the several distinct types of existing settlements to adapt their framework to a new uniform definition.

2 EXISTING ATTEMPTS TO DEFINE REFUGEE CAMPS

Before assessing the definition of refugee camps proposed in this paper, it is important to bear in mind that States are bound to their international human rights obligations towards camp residents even in the absence of a legal definition for the term ‘refugee camp’. Those obligations also remain applicable despite the fact that at the treaty level there is no delimitation of States’ obligations in the specific context of refugee camps. The reason is that camps are located within the geographical boundaries of host countries, and the presence of an individual in the territory of a State is widely accepted as the primary link to assert jurisdiction regarding international human rights obligations.⁸ One of the first references to refugee camps at the international level was made through Conclusion No. 48 by the UNHCR Executive Committee (ExCom):

Refugees in camps and settlements have, together with the basic rights they enjoy [...], protection granted or afforded to them by the country of refuge. [...] It is essential that States of refuge do all within their capacity to ensure that the civilian and humanitarian character of such camps and settlements is maintained.⁹

The ExCom reiterated the “exclusively civilian and humanitarian character” of refugee camps in its Conclusion No. 94 and added that all actors are obliged to cooperate to ensure that, including the refugees themselves.¹⁰ The 2016 New York Declaration for Refugees and Migrants (hereinafter New York Declaration) also makes reference to the responsibility of host States in ensuring the humanitarian character of refugee camps.¹¹ This instrument and the referred ExCom Conclusions are relevant in highlighting the humanitarian and civilian nature of camps but they fail to provide for a legal definition of refugee camps or a delimitation of host States’ obligations in

⁸ *Hirsi Jamma and Others v. Italy*, Appl. No. 27765/09, European Court of Human Rights (hereinafter ECtHR) (23 February 2012), §71.

⁹ UNHCR ExCom Conclusion No. 48 (XXXVIII) ‘Military or Armed Attacks on Refugee Camps and Settlements’ (1987), §4.

¹⁰ UNHCR ExCom Conclusion No. 94 (LIII) ‘Conclusion on the Civilian and Humanitarian Character of Asylum’ (2002), preamble.

¹¹ New York Declaration for Refugees and Migrants, UNGA Res 71/1 (hereinafter New York Declaration) (03 October 2016) UN Doc A/RES/71/1, §73.

such contexts. In this regard, the UNHCR definition of the term ‘camp’ will serve as a starting point for the proposals made in this paper:

A camp is any purpose-built, planned and managed location or spontaneous settlement where refugees are accommodated and receive assistance and services from government and humanitarian agencies. The defining characteristic of a camp [...] is some degree of limitation on the rights and freedoms of refugees, such as their ability to move freely, choose where to live, work or open a business, cultivate land or access protection and services.¹²

In this chapter, it was possible to analyze previous formulations that have addressed the civilian and humanitarian character of refugee camps, without, however, establishing a legal definition or the delimitation of States’ obligations towards them. Considering that the notion of ‘refugee camp’ has not yet been addressed in binding instruments in international law, this paper will present other elements that could guide the regulation of refugee camps at the universal level in order to address protection gaps and legal uncertainties regarding violations of the camp residents’ human rights.

3 ELEMENTS OF THE PROPOSED DEFINITION OF ‘REFUGEE CAMPS’

3.1 THE OBJECTIVE OF REFUGEE CAMPS

One of the controversial issues in the context of refugee camps refers to the possible justifications behind their establishment. Whereas the UNHCR refers to camps as ‘purpose-built’ locations, as mentioned *supra*, one should enquire on what such purposes would be acceptable under international standards. It would also have to be determined which entity between the host State and the UNHCR would have the competence of defining such purpose.

Among the usual justifications given by host States for the establishment of camps, reference is made to questions of national security, public order and immigration control, as well as competition for employment or natural resources.¹³ The UNHCR, on the other hand, tends to support the settling of camps to handle humanitarian responses, such as the urgent distribution of

¹² UNHCR ‘Policy on Alternatives...’, at p. 12.

¹³ *Id.*, p. 4.

aid, the identification of individuals during mass displacements and also to guarantee that they have access to asylum procedures in the host States.¹⁴ In this paper, I propose a justification for the establishment of refugee camps that goes in the direction of the latter approach adopted by the UNHCR, in the sense that the aim of those settlements would be to provide humanitarian assistance in the form of safe living conditions and the provision of vital services for individuals forcibly displaced by threats to their life and freedom.

3.2 ELIGIBILITY AS CAMP RESIDENTS

The definition of refugee camps here proposed aims to cover three categories of persons who could be qualified as camp residents: refugees *de jure*, asylum-seekers who are refugees *de facto* and internally displaced persons (hereinafter IDPs). The first group refers to individuals formally recognized as refugees by host States,¹⁵ while the term ‘refugees *de facto*’ covers asylum-seekers whose refugee status is in the process of being determined, or whose asylum application was denied but who nonetheless cannot be removed for humanitarian reasons.¹⁶ Extending the protection of refugee camps to both refugees *de jure* and *de facto* finds support in the idea that refugee status is declaratory¹⁷ and that, as a result, refugees and asylum-seekers are equally entitled to international protection.¹⁸ An interesting aspect in this regard is the policy adopted in Kenya, where Somali asylum-seekers who register in camps have their status recognized *prima facie* on the basis of their nationality.¹⁹

IDPs, on the other hand, are individuals who have been forcibly displaced in their own countries of origin.²⁰ In this regard, terminology issues could arise since that the expression

¹⁴ Ibid., p. 4.

¹⁵ HYNDMAN, J., ‘Change and Challenge at UNHCR: A Retrospective of the Past Fifty Years’ (2001) 19 Canada’s Journal on Refugees 49.

¹⁶ “De facto refugees are refugees, especially asylum seekers, whose applications are pending or were denied and who cannot be expelled due to humanitarian reasons”. KUGELMANN, D., ‘Refugees’ (2010) MPEPIL, §16.

¹⁷ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (reissued, December 2011), §28.

¹⁸ *Hirsi Jamma and Others v. Italy*, ECtHR... (Pinto de Albuquerque, J., concurring).

¹⁹ Human Rights Watch, “‘Welcome to Kenya’: Police Abuse of Somali Refugees’ (Report) (17 June 2010) ISBN: 1-56432-641-1, p. 12-13.

²⁰ UNHCR, *Guiding Principles on Internal Displacement* (22 July 1998) ADM 1.1, PRL 12.1, PR0/98/109 (hereinafter IDP Guiding Principles), introduction.

‘refugee camp’ gives the idea that its population would only be composed by refugees, whereas ‘IDP camps’ would host victims of displacement within their own States. However, the complex reality of camps demonstrates that such division is not always clear and that the three groups mentioned above may simultaneously compose camp populations.²¹ In recognizing the existence of such scenarios, the UNHCR has even developed operational criteria for protection clusters in order to address ‘mixed situations’ in camps hosting both refugees and IDPs.²² For this reason, a different term such as ‘humanitarian camps’ would be more appropriate to refer to these settlements, considering that the main common feature of both refugee and IDP camps is the protection of their humanitarian character, as it will be assessed in sub-chapter 3.6. Notwithstanding, the expression ‘refugee camp’ will be used in this paper to avoid terminology confusions since the idea of ‘humanitarian camp’ is not as established in international law.

A common feature among refugees, asylum-seekers and IDPs is the scarce protection afforded to them by their countries of origin. In this regard, the notion of “stateless persons *de facto*”²³ may provide guidance in assessing the profile of potential camp residents based on the lack of protection that they face. Furthermore, I sustain that there is no reason to exclude IDPs from residing in camps with refugees and asylum-seekers under the definition of refugee camps here proposed, considering the similarity in protection needs among these three groups.²⁴ In fact, the diversity of refugee camps populations, especially in scenarios of mass displacement, could hardly be accommodated to the narrow refugee definition based on persecution from the UNHCR Statute.²⁵ Furthermore, the UNHCR has been considered responsible for “protecting and assisting

²¹ “The coordination of international protection, assistance and solutions is inherent to UNHCR's refugee mandate and drives from the High Commissioner's accountability for ensuring international protection [for refugees], [...] whether residing in urban or rural host communities or in camps, alongside [IDPs] and other population affected by humanitarian crises or in non-emergency settings”. UNHCR, ‘Refugee Coordination Model’ (2015) <<https://emergency.unhcr.org/entry/60930/refugee-coordination-model-rcm>> accessed 25 July 2017.

²² *Id.*

²³ “Persons who [...] no longer enjoy the protection of the country of which they were nationals [and] no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them assistance and protection, or because they themselves renounce the assistance and protection of the countries of which they are nationals”. UN Ad Hoc Committee on Refugees and Stateless Persons, ‘A Study of Statelessness’ (1 August 1949) UN Doc E/1112; E/1112/Add.1.

²⁴ UNGA, ‘Note on International Protection’ (07 September 1994), UN Doc A/AC.96/830, §64.

²⁵ “[The broadening of the UNHCR’s mandate] shows awareness of the difficulty of determining in the case of a massive exodus that each and everyone has a well-founded fear of persecution in the sense of the UNHCR Statute”. GOODWIN-GILL, G.S. and McADAM, J., *The Refugee in International Law* (3edn OUP, Oxford 2007), p. 29.

refugees and displaced persons throughout the world”²⁶ and its protection activities over the years have encompassed all the three groups assessed in this sub-chapter.²⁷ The considerations about their similar protection needs are also in line with the objectives for the establishment of camps that I addressed in the previous sub-chapter.

In that sense, the criteria proposed in this paper for assessing the eligibility to reside in camps finds support in the notion of lack of protection as a matter of fact, when “it is clear or it may be inferred that individuals [...] are unable or unwilling to avail themselves of the protection [...] of their country” for distinct reasons, including persecution and armed conflicts.²⁸

3.3 APPLICABLE RULES IN THE DEFICIENCY OF STATE PRESENCE

Although host States are more likely to have the adequate resources and capacity to administer refugee camps, the performance of such task predominantly by third actors is not uncommon. Due to the “marginalization of the host State’s law and law enforcement”²⁹, organizational powers are often exercised by the UN, humanitarian organizations or by the camp residents themselves. The main consequence of that is that camp residents enjoy their rights in a more limited manner compared to the local population under domestic laws, which ultimately results in a disregard for their rights as protected by international human rights instruments. Such scenario has drawn the attention of several scholars, which refer to the legal “limbo”³⁰ that characterizes refugee camps, and to the status of camp residents as “wards of international law”.³¹

²⁶ UNGA Res 35/41 (25 November 1980) UN Doc A/RES/35/41, §§28-32.

²⁷ The High Commissioner’s core mandate covers refugees [...] Asylum-seekers also fall within the High Commissioner’s competence *ratione personae*. The GA has adopted the term in resolutions relating to the High Commissioner since 1981 [...]. The High Commissioner does not have a general or exclusive mandate for [IDPs] but has been authorized by the GA to be involved operationally under certain circumstances in enhancing protection and providing humanitarian assistance to [IDPs] through special operations”. UNHCR, ‘Note on the Mandate of the High Commissioner for Refugees and his Office’ (2013) <<http://www.unhcr.org/526a22cb6.pdf>> accessed 28 July 2017.

²⁸ GOODWIN-GILL, G.S. and MCADAM, J., *The Refugee...*, at p. 30.

²⁹ JANMYR, M., ‘Spaces of Legal Ambiguity: Refugee Camps and Humanitarian Power’ (2016) 7 *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 415.

³⁰ TURNER, S., ‘What Is a Refugee Camp? Explorations of the Limits and Effects of the Camp’ (2015) 29 *Journal of Refugee Studies* 142.

³¹ HOLZER, E. ‘What Happens to Law in a Refugee Camp?’ (2013) 47 *Law and Society Review* 839.

For the definition of ‘refugee camp’ proposed in this paper, I focus on the importance of affirming the host States’ role in the administration and application of the laws to which they are bound to, as they have territorial jurisdiction over those areas. As mentioned previously, it is true that third actors have taken several humanitarian responsibilities for themselves in the deficiency of State action. However, if a legal definition is to be established to avoid gaps between the provision and the actual enforcement of laws, a clear reference to the host States’ primary obligation for administering and supervising refugee camps must be made. This is justified by the fact that territorial jurisdiction not only gives those States authority to regulate life in refugee camps in accordance with their laws, but also to hold offenders responsible before their courts at the domestic level. In addition, territorial jurisdiction permits that responsibility for human rights violations under international instruments be attributed to host States, thus allowing for their accountability before treaty bodies or international courts.

At the current stage, an effective oversight of States’ obligations by the UNHCR remains challenged in the absence of regulation for this form of settlement in the existing international refugee law treaties. Even if that were the case, the scholarship remains skeptical about the UNHCR’s ability to enforce States’ obligations due to its political and financial dependence on States and due to the intensification of its humanitarian functions, which rely on such dependence.³²

The fact that camp residents may end up developing their own legal regime – in connection with humanitarian actors or not – in the absence of State regulation is extremely relevant from the perspective of empowering those individuals in situation of vulnerability. However, if a more solid framework of effective implementation of norms and accountability for violation of their rights is to be set, such self-governing regime is unlikely to provide meaningful results. For that reason, a legal definition of ‘refugee camp’ should call for strengthening host States’ compliance with their human rights obligations, rather than accepting a failure in this regard and transferring such responsibility to humanitarian actors and to the residents themselves.

In connection with the considerations above, an interesting question concerns the co-existence of the host States’ human rights obligations in their own territories, on one hand, and the

³² CHETAIL, V., ‘Are Refugee Rights...’, at p. 65.

UNHCR's duty to provide international protection to refugees,³³ on the other hand. The UNGA Resolution 68/141, for instance, recalls that the Office of the High Commissioner for Refugees plays a role as the "leading entity of the cluster for protection, camp coordination and management and emergency shelter in complex emergencies."³⁴ UNHCR has nonetheless reaffirmed the States' primary responsibility for protecting refugees, regardless of whether they reside in camps or not.³⁵

Some could try to argue that host States that have not consented to the establishment of refugee camps in their territories should not have the burden of regulating those settlements and much less of being responsible for violations occurred therein. Such argument, however, does not find support in the international practice and jurisprudence, as States remain bound by their human rights obligations even for individuals conducting harmful activities such as terrorists and criminals, and irrespective of the victims' conducts.³⁶

Furthermore, the definition I propose does not limit the identification of refugee camps as such solely on the basis of their registration with the host State or the UNHCR (or the lack thereof). Both forms of registration would qualify for characterizing a refugee camp, based on the same arguments presented previously regarding host States' obligations within their territories. Therefore, host States continue to be bound by their human rights obligations regardless of whether refugee camps are registered or not, and regardless of the authority responsible for their registration, as long as these settlements are located within their jurisdiction.

Apart from these considerations, the definition of refugee camps here proposed includes a reference to the *erga omnes* obligations of third States to refrain from violating the rights of camp residents, either through their agents or through private individuals and organizations acting with their support or acquiescence.³⁷ As stated previously, the primary responsibility for protection in camps shall lie with host States, but this should not affect the *erga omnes* obligations

³³ Statute of the Office of the United Nations High Commissioner for Refugees (hereinafter UNHCR Statute), UNGA Res 428(V) (14 December 1950) UN Doc A/RES/428(V), Chapter I, §1.

³⁴ UNGA Res 68/141 (18 December 2013) UN Doc A/RES/68/141, §13.

³⁵ UNHCR, 'Refugee Coordination Model'.

³⁶ *Chahal v. The United Kingdom*, Appl. No. 22414/93, ECtHR (15 November 1996), §79.

³⁷ *Case of the Mapiripan Massacre v. Colombia* (Merits, Reparations, and Costs), Inter-American Court of Human Rights Series C No. 134 (15 September 2005).

of third States towards camp residents, such as the ones relating to the prohibition of genocide³⁸ and racial discrimination³⁹.

3.4 THE CAMPS' SIZE AND LOCATION

I sustain that proposing standardized geographic dimensions for all refugee camps would not seem to be feasible. Flows of forced displacement vary from one country to another, and therefore the humanitarian needs for camps are distinct in different regions. However, the requirement that camps be set up from a minimum distance from borders⁴⁰ is essential to ensure the protection of their residents against threats coming from the host States' neighboring countries.⁴¹ Among the examples of refugee settlements that were at risk due to unstable border situations, there were the Yida camp in South Sudan⁴² and the Gatumba camp in Burundi.⁴³ In the latter case, investigations concluded that forcing camp residents to reside in settlements near international borders may constitute a violation to the right to life as it "frequently exposes them to cross-border attacks and killings".⁴⁴ From this perspective, closed camps would reveal their pertinence since attacks and other means of violence and harassment are more likely to take place where entry is not regulated by checkpoints or other forms of control. The questions relating to closed camps will be addressed in sub-chapter 4.4.

³⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Merits) [2007] ICJ Rep 43.

³⁹ *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (Merits) [1970] ICJ Rep 32.

⁴⁰ DOURGNON, P. and KASSAR, H., 'Refugees in and out North Africa: a study of the Choucha refugee camp in Tunisia' (2014) 24 *European Journal of Public Health* 9.

⁴¹ "There are numerous instances of cross-border attacks initiated by [the sending state]. In the 1980s, South Africa conducted repeated bombing raids against suspected African National Congress (ANC) refugees in Angola and Botswana [...]. Sometimes cross-border attacks against refugees are carried out by sub-state groups rather than by national armies". LISCHER, S.K., *Dangerous Sanctuaries: Refugee Camps, Civil War, and the Dilemmas of Humanitarian Aid* (Cornell University Press, Ithaca 2005), p. 11-12.

⁴² UNHCR, 'Border insecurity increasing concerns for refugees' safety in Yida, Sout Sudan' (27 March 2012) <<http://www.unhcr.org/4f719a059.html>> accessed 15 July 2017.

⁴³ JANMYR, M., *Protecting Refugees in Refugee Camps: Unable and Unwilling States, UNHCR ad International Responsibility* (vol 1 Martinus Nijhoff Publishers, Leiden 2014), p. 123.

⁴⁴ JANMYR, M., *Protecting Refugees in Refugee Camps: Unable and Unwilling States, UNHCR ad International Responsibility* (vol 1 Martinus Nijhoff Publishers, Leiden 2014), p. 123.

3.5 EXCEPTIONAL AND TEMPORARY NATURE

As it will be demonstrated *infra*, the establishment of refugee camps has allowed millions⁴⁵ of refugees across the globe to seek some form of refuge from persecution and other threats to their life and freedom. However, for the present paper I endorse the position held by the UNHCR in the sense that camps should be exceptional and temporary⁴⁶, which is also the line adopted by the New York Declaration.⁴⁷ Furthermore, an international regulation aimed at promoting the exceptional character of refugee camps should require host States and humanitarian actors to take active steps towards the elimination of causes that lead to their establishment or, alternatively, take steps for the integration of their residents within the local societies.⁴⁸

Along these lines, the temporary duration of camps would be relevant in preventing that individuals are kept in camps indefinitely. Nonetheless, such feature must be carefully assessed in light of the reality of major displacement movements over the past few years, which are often related to “protracted” crises.⁴⁹ The temporary character would be an essential aspect of an international definition for refugee camps also because States have refused to establish these settlements out of fear that the presence of the refugee population became permanent in their countries.⁵⁰ Another controversial question in this regard is that encampment is not included as one of the durable solutions for refugees within the existing international framework, which refer to repatriation, resettlement and local integration.⁵¹ Nonetheless, it must be pointed out that in 2015

⁴⁵ UNHCR, ‘Global Trends: Forced Displacement in 2015’ (20 June 2016) <<http://www.unhcr.org/576408cd7.pdf>> accessed 27 July 2017.

⁴⁶ UNHCR ‘Policy on Alternatives...’, at p. 6.

⁴⁷ New York Declaration, §73.

⁴⁸ UNHCR ‘Policy on Alternatives...’, at p. 6.

⁴⁹ “Zaatari Camp was constructed in July 28, 2012 by the Government of Jordan and international agencies as an emergency response to the protracted Syrian conflict to which the return period is still unknown”. BARQAWI, D., ‘Why do we still build refugee camps?’ (08 April 2016) <<http://masteremergencyarchitecture.com/2017/05/09/why-do-we-still-build-refugee-camps/>> accessed 30 July 2017.

⁵⁰ Security Council Report, ‘Monthly forecast: May 2017’, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2017_05_forecast.pdf> accessed 27 July 2017.

⁵¹ “While large numbers of refugees reside in camps, none of the three durable solutions favoured by the [UNHCR] – repatriation, resettlement and local integration – mentions camps. This paradox between intentions and practices means that millions of displaced persons live in situations that are deemed non-viable by those who are in charge of them.” TURNER, S., ‘What Is a Refugee Camp?...', at 142.

less than 160.000 refugees benefited from resettlement⁵², whereas more than four million of refugees were found to be living in planned or self-settled camps.⁵³

In light of these figures, and considering that repatriation and local integration heavily depend on the situation on the ground in countries of origin or countries of asylum, the development of a regulation for refugee camps as a form of ‘non-durable’ solution would help to improve the protection of those who are not able to return home or to successfully integrate in the host country. Furthermore, the three durable solutions mentioned above apply to refugees and asylum-seekers but not to IDPs, which would nonetheless be eligible as camp residents under the proposals made in this paper. The current gap in protective solutions for camp residents, combined with the potential negative consequences of long-term encampment⁵⁴, thus support the establishment of refugee camps as a solution that would be, at least in principle, temporary.

3.6 CIVILIAN AND HUMANITARIAN CHARACTER

The civilian and humanitarian character of refugee camps is one of the most consolidated aspects of the existing references regarding this form of settlement, as demonstrated in chapter 3. In this regard, the definition proposed in this paper endorses that host States shall bear “the primary responsibility”⁵⁵ to ensure the civilian and humanitarian nature of camps, “inter alia, through effective measures to prevent the infiltration of armed elements, [by identifying and separating] armed elements from refugee populations [and by settling] refugees in secure locations.”⁵⁶ The UNGA has also previously condemned breaches of the rights of refugees and asylum-seekers resulting from armed attacks against refugee camps.⁵⁷ Furthermore, the humanitarian and civilian nature of camps also applies with respect to IDPs.⁵⁸

⁵² UNHCR, ‘Resettlement’ <<http://www.unhcr.org/resettlement.html>> accessed 14 July 2017.

⁵³ UNHCR, ‘Global Trends...’.

⁵⁴ UNHCR ‘Policy on Alternatives...’, at p. 4.

⁵⁵ UNSC Res 1208, ‘On the maintenance of the security and civilian and humanitarian character of refugee camps and settlements in Africa’ (19 November 1998) UN Doc S/RES/1208, §3.

⁵⁶ UNGA Res 68/141, at §21.

⁵⁷ UNGA Res 41/124 (04 December 1986) UN Doc A/RES/41/124, §4.

⁵⁸ “Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular [...] Attacks against their camps or settlements”. UNHCR, IDP Guiding Principles, Principle 10(2)(d).

The protection of camps as civilian settlements is also reinforced by international humanitarian law. Based on the principle of distinction, refugee camps⁵⁹ and their residents⁶⁰ should be protected against attacks, and they shall not be the targeted regardless of whether a conflict taking place in the host country is international or non-international.⁶¹

The civilian and humanitarian nature of camps is extremely relevant for the formulation of their legal definition, especially considering that conflicts are a major cause of displacement.⁶² In addition, the presence of armed groups in camps would have to be strictly prohibited, as it raises security concerns that can lead humanitarian organizations to leave settlements⁶³ and that can influence host States' decisions on the closure of camps.⁶⁴ Without a rigorous observance of the civilian and humanitarian aspects for camps, their residents would be subject to continuous threats and these settlements would therefore fail to fulfil their function of offering them at least a temporary relief.

4 DELIMITATION OF STATES' OBLIGATIONS

4.1 LIMITATIONS ON HUMAN RIGHTS MUST NONETHELESS RESPECT CORE OBLIGATIONS

According to the UNHCR, the defining characteristic of camps "is typically some degree of limitation on the rights and freedoms of refugees and their ability to make meaningful choices about their lives".⁶⁵ However, the protection that refugee camps are intended to provide

⁵⁹ International Committee of the Red Cross, Study on Customary International Humanitarian Law, Rules 7 and 10 (hereinafter ICRC CIHL Rules).

⁶⁰ ICRC CIHL Rules 1 and 6.

⁶¹ "The ICRC study on customary International Humanitarian Law [concluded that arguably 141] out of 161 rules of customary humanitarian law, many of which are based on rules of Protocol I applicable as a treaty to international armed conflicts, apply equally to non-international armed conflicts." Marco Sassòli, Antoine A. Bouvier and Anne Quintin, *How does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law* (3edn ICRC, Geneva 2011), p. 24.

⁶² CHETAIL, V., 'Armed Conflict...' at p. 700.

⁶³ LISCHER, S.K., *Dangerous Sanctuaries...*, at p. 91.

⁶⁴ Amnesty International, 'Amnesty International Report 2016/17' (21 February 2017) AI-Index POL 10/4800/2017 <<https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>>, accessed 29 July 2017, p. 138.

⁶⁵ UNHCR 'Policy on Alternatives...', at p. 4.

may become illusory where the restrictions on the residents' rights are so severe that they end up being subject to dire living conditions. In such cases, camp residents would ultimately feel compelled to leave the host States since the camps would not be fulfilling their purpose.

When it comes to lawful restrictions on human rights as provided in international instruments, there are two possible avenues for States: either a derogation must be made or the State must be able to justify the adoption of limitations under the treaty provision that regulates such right.⁶⁶ With respect to derogations, it would be probably difficult to demonstrate that the presence of refugee camps would always constitute a “public emergency which threatens the life of the nation” in order to authorize derogations.⁶⁷ Such state of emergency would therefore have to be related to other factors. However, it would be unlikely for victims of forced displacement to choose to settle in countries facing such scenarios, since they have left their countries or places of residence precisely due to situations that posed a risk to their lives and freedom. In either case, certain rights often violated in the context of refugee camps are non-derogable, such as the prohibition against torture and ill-treatment.⁶⁸ In addition, even when exceptions to the rights of refugees are authorized based on security concerns,⁶⁹ the guarantees provided by humanitarian law and human rights continue to apply.⁷⁰ According to Chetail, “[Refugee law, humanitarian law and human rights] must be applied cumulatively so that possible restrictions and exceptions permitted by one of them – can be overridden or conditioned by the rules and guarantees under the other branches.”⁷¹

The provisions on derogations would therefore not be appropriate to justify human rights restrictions within the ambit of a uniform definition of refugee camps. On the other hand, the system of limitations would be more appropriate for assessing interferences on the rights of camp residents, as it requires different criteria which must be analyzed on a case-by-case basis.

⁶⁶ CHETAIL, V., ‘Armed Conflict...’, at p. 716.

⁶⁷ “In the general context of Article 15 of the Convention, the natural and customary meaning of the words ‘other public emergency threatening the life of the nation’ is sufficiently clear; whereas they refer to an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed.” *Lawless v. Ireland*, Appl. No. 332/57 (A/3) ECtHR (01 July 1961), §28.

⁶⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (hereinafter ICCPR), art. 4(2).

⁶⁹ See, for example, arts. 9 and 33(2) of the 1951 Geneva Convention.

⁷⁰ CHETAIL, V., ‘Armed Conflict...’, at p. 714.

⁷¹ *Id.*

Thus, an international regulation of refugee camps could refer to the host States' power to impose limits on the rights of residents in accordance with treaty provisions that allow for such possibility, provided that the criteria for those limitations are met.

Nonetheless, I must clarify that those considerations do not aim to encourage host States' discretion in imposing restrictions on the rights of camp residents. On the contrary, this paper seeks to propose an international regulation of refugee camps that is based on the full protection and enjoyment of the rights of camp residents, in order to allow their affirmation as independent citizens free from abuse.

4.2 THE RIGHT TO LIFE AND THE PROHIBITION AGAINST TORTURE AND ILL-TREATMENT

The Human Rights Committee has explicitly stated in its draft General Comment 36 that States' have a "heightened duty to protect the right to life" with regards to persons residing in refugee or IDP camps".⁷² Nonetheless, the right to life of camp residents has often been violated through the conducts of both State⁷³ and non-State actors.⁷⁴ In addition, thousands of people in IDP camps in Nigeria have died from severe malnutrition,⁷⁵ and many camps present high death rates associated with the outbreak of infectious diseases.⁷⁶ The prevention of such scenarios is also among States' obligations to protect life and the enjoyment of life with dignity.⁷⁷

⁷² Human Rights Committee, 'Draft General Comment 36: Article 6 (Right to Life)' (Revised draft prepared by the Rapporteur, Advance Unedited Version) (July 2017), §29. <<http://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6.docx>> accessed 01 August 2017.

⁷³ The UNHCR found that in 2008 "the Government security forces [of Sudan] failed to protect the right to life [...]. [They] used lethal force in an unnecessary, disproportionate and therefore unlawful manner when they opened fire into the crowd of IDPs". UN Office of the High Commissioner for Human Rights, 'Eleventh periodic report of the UN High Commissioner for Human Rights on the situation of human rights in the Sudan: Killing and injuring of civilians on 25 August 2008 by government security forces: Kalma IDP camp, South Darfur, Sudan' (23 January 2009) <<http://www.ohchr.org/Documents/Countries/11thOHCHR22jan09.pdf>> accessed 30 July 2017.

⁷⁴ UNHCR, 'Report of the Secretary-General on Assistance to refugees, returnees and displaced persons in Africa' (21 August 2012) UN Doc A/67/323.

⁷⁵ Amnesty International, 'Amnesty International Report 2016/17', at p. 20.

⁷⁶ MCCONNACHIE, K., 'Rethinking the 'Refugee Warrior': The Karen National Union and Refugee Protection on the Thai – Burma Border' (2012) 4 Journal of Human Rights Practice 37.

⁷⁷ Human Rights Committee, 'Draft General Comment 36', at §30.

The right of camp residents not to be subjected to torture or ill-treatment has equally been violated by State agents⁷⁸ and non-State actors.⁷⁹ Violations of this prohibition have also been found in relation to degrading conditions of refugee camps⁸⁰ and regarding incidents where camp residents were kidnapped from camps and subjected to torture by smugglers.⁸¹ In addition, despite the recognition under international law that rape can amount to torture⁸², the occurrence of such practice by the police, other refugees and host State nationals is largely verified in camps such as the ones in Dadaab.⁸³ Cases of ill-treatment by State officials are also very frequent, with reports of camp residents being subject to physical aggression or being forced to strip naked.⁸⁴

In light of those considerations, the regulation for refugee camps proposed in this paper would require strict respect by host States' of their international obligations with regards to the right to life and the prohibition against torture and ill-treatment. Allowing for host States' discretion in this regard would put at great risk the protection of life and freedom of refugees, asylum-seekers and IDPs, who seek protection in refugee camps precisely not to continue being subjected to such threats.

4.3 RIGHT TO SECURITY OF THE PERSON

The UNHCR has stated that camp administration is often undertaken by local authorities, and that it involves “the overall supervision of a camp response, including security of the persons of concern.”⁸⁵ Therefore, apart from the considerations made in the previous sub-chapter relating to violations against the physical and mental integrity of camp residents, another

⁷⁸ Amnesty International, ‘Amnesty International Report 2008 – Thailand’ (28 May 2008). <<http://www.refworld.org/docid/483e27b646.html>> accessed 30 July 2017.

⁷⁹ UNGA, ‘Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa’ (11 October 2002) UN Doc A/57/465 (2002).

⁸⁰ *Sufi and Elmi v. United Kingdom*, Appl. No. 8319/07 (ECtHR, 28 June 2011), §§278-292.

⁸¹ Human Rights Watch, “‘I Wanted to Lie Down and Die’: Trafficking and Torture of Eritreans in Sudan and Egypt’ (Report) (11 February 2014) ISBN: 978-1-62313-0978, p. 22.

⁸² *Marti de Meija v. Peru*, Case 10.970, Report No. 5/96, Inter-American Commission on Human Rights (01 March 1996).

⁸³ Human Rights Watch, “‘Welcome to Kenya...’, at p. 6; 52.

⁸⁴ *Id.*, p. 47-49.

⁸⁵ UNHCR, ‘Camp Coordination, Camp Management (CCCM)’ (2015) <<https://emergency.unhcr.org/entry/42975/camp-coordination-camp-management-cccm>> accessed 23 July 2017.

question that arises regarding the right to security of the person is the responsibility for law enforcement within camps. In Palestinian camps in Lebanon, for instance, around 450.000 refugees are at risk because their settlements “mainly fall outside the effective jurisdiction of the Lebanese security services.”⁸⁶ In addition, the protection of camp residents requires the adoption of preventive security measures such as the establishment of checkpoints, as it will be analyzed in sub-chapter 4.4.

When it comes to assessing who would be allowed to enter or reside in camp premises, there is not much clarity on which criteria could be used. For refugees, the 1951 Geneva Convention provides for exclusion clauses and individuals falling under these conditions would not be entitled to protection by the UNHCR.⁸⁷ However, the definition of refugee camps proposed in this paper also encompasses IDPs as potential camp residents, and the existing international framework on internal displacement does not provide for conditions that could exclude IDPs from protection based on the risk that they could pose to the camp community or to the host State.⁸⁸ In any case, it must be pointed out that host States remain bound, as part of their international human rights obligations, to ensure the right to security of all persons within their jurisdiction, including refugees, asylum-seekers and IDPs living in camps, in order to respect and protect their physical and mental integrity.⁸⁹

4.4 FREEDOM OF MOVEMENT

Legal scholarship recognizes that the practice of encampment, especially in the context of closed refugee camps, may lead to serious violations of their residents’ freedom of movement. In this paper, I propose a legal definition of refugee camps that would require States to respect, at

⁸⁶ Security Council Report, ‘Monthly forecast: May 2017’.

⁸⁷ Convention Relating to the Status of Refugees (28 July 1951) 189 UNTS 137 (hereinafter 1951 Geneva Convention), article 1(F); UNHCR Statute, §7(d).

⁸⁸ The Guiding Principles on Internal Displacement does not provide for exclusion clauses.

⁸⁹ “The right to security of person protects individuals against intentional infliction of bodily or mental injury”. Human Rights Committee, ‘General Comment 35: Article 9 (Liberty and security of person)’ (2014) UN Doc CCPR/C/GC/35, §3.

a minimum, the core obligations of that right.⁹⁰ By way of example, host States would be prevented from adopting arbitrary measures to impede the movement of residents beyond camps boundaries.

This does not mean that a definition of refugee camps would require them to be completely open spaces. As previously stated in this paper, closed camps are many times necessary to ensure the humanitarian protection of their residents. For this reason, I propose that restrictions on freedom of movement be limited to measures of identification of camp residents and administration personnel, for instance, through the adoption of checkpoints or security screenings, but not for the purposes of preventing their movement in and out of camps as this would be contrary to international law.⁹¹ Notwithstanding, such restrictive practices are still imposed in countries like Kenya⁹² and Ethiopia⁹³, where the government impedes the movement of refugees out of camps.⁹⁴ International law also provides that limitations on the freedom of movement of IDPs residing in camps shall only be applied exceptionally. The UN Guiding Principles on Internal Displacement (hereinafter IDP Guiding Principles) provides that IDPs should not be confined to camps as a rule, but “if in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.”⁹⁵

Although it is true that freedom of movement is not included among the non-derogable provisions in art. 4(2) of the International Covenant on Civil and Political Rights (hereinafter ICCPR), host States can only impose severe restrictions upon this right if they are under a situation of public emergency, or if the conditions provided in art. 12(3) ICCPR are met. In the present work,

⁹⁰ “In adopting laws providing for restrictions permitted by article 12, paragraph 3, States should always be guided by the principle that the restrictions must not impair the essence of the right [...]. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution.” Human Rights Committee, ‘General Comment No. 27: Freedom of movement’ (02 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9, §13.

⁹¹ Human Rights Watch, “Welcome to Kenya...”, at p.5; see also 1951 Geneva Convention, art. 26.

⁹² “The right to enter, remain and reside anywhere in Kenya is constitutionally reserved to citizens and therefore is no violation of the right to freedom of movement in requiring that refugees wishing to leave the camp obtain permission from the Camp Officer”. *Coalition for Reform and Democracy and others v Republic of Kenya and others*, Petition No. 628 of 2014 consolidated with Petition No. 630 of 2014 and Petition No. 12 of 2015 (High Court of Kenya, 23 February 2015), §403 <www.refworld.org/docid/54ecbdef4.html> accessed 12 July 2017.

⁹³ Federal Negaritgazeta of the Federal Democratic Republic of Ethiopia, ‘Proclamation No. 409/2004 of 2004: Refugee Proclamation’ (19 July 2004), art. 21(2) <<http://www.refworld.org/docid/44e04ed14.html>> accessed 29 July 2017.

⁹⁴ D’ORSI, C., *Asylum-seeker and Refugee Protection in Sub-Saharan Africa: The Peregrination of a Persecuted Human Being in Search of a Safe Heaven* (Routledge, New York 2016), pp. 294-295.

⁹⁵ UNHCR, IDP Guiding Principles, Principle 12.

I sustain that restrictions on freedom of movement for the identification of camp residents and administration personnel for security purposes would be in line with art. 12(3) ICCPR, as such measures would be necessary to protect “the rights and freedoms of others”⁹⁶. The definition here presented would also prohibit the application of penalties regarding movement in and out of camps. This would not only reinforce the protection of camp residents’ freedom of movement, but also contribute to avoiding situations where refugees decide not to register with the competent authorities out of fear of those sanctions.⁹⁷

Some argue that refugee camps should nonetheless be open to facilitate the local integration of their residents, as well as their pursuit for some form of work to reduce their dependence on humanitarian assistance.⁹⁸ However, it is important to point out that host States are not obliged to resort to integration as a durable solution for refugees, as this has been deemed to be “a sovereign decision” of the receiving State.⁹⁹ In addition, the integration and independence of camp residents could still be achieved under the definition of refugee camps proposed in this paper, since the regulation of movement for the mere purposes of identification would not hamper the realization of those goals.

4.5 RESPECT FOR BASIC ECONOMIC AND SOCIAL RIGHTS

Although there is currently no universal instrument that provides for the specific human rights obligations of host States towards camp residents, there has been legal developments in the area of social, economic and cultural rights through the adoption of the IDP Guiding Principles¹⁰⁰ and the New York Declaration. The latter provides, among other commitments, that host States would “take measures to foster self-reliance by pledging to expand opportunities for refugees to access [...] education, health care and services, livelihood opportunities and labour markets”.¹⁰¹

⁹⁶ ICCPR, art. 12(3); See also Human Rights Watch, “‘Welcome to Kenya...’, at p. 79-82.

⁹⁷ UNHCR ‘Policy on Alternatives...’, at p. 4.

⁹⁸ Id.

⁹⁹ UNHCR EXCOM Conclusion No. 104 (LVI) ‘Conclusion on Local Integration’ (2005), preamble.

¹⁰⁰ UNHCR, IDP Guiding Principles 22 and 23, and Section IV on humanitarian assistance.

¹⁰¹ New York Declaration, Annex I, para. 13(b).

The 1951 Geneva Convention also provides for welfare guarantees in its Section IV, such as the right to housing and to education.

The strict respect for vital economic and social rights is a fundamental aspect of the refugee camp definition here proposed, as these rights have a direct impact in the protection of the life and freedom of camp residents. Otherwise, host States might continue to neglect their obligations to ensure the economic and social rights of refugees, asylum-seekers and IDPs, especially considering that such rights are subject to the availability of their resources.¹⁰² This can lead to situations such as the one in Greece, where the living conditions in refugee camps have been considered inadequate “for hosting individuals even for a few days”.¹⁰³ The Human Rights Committee has also expressed its views regarding the rights of refugees to enjoy their economic and social rights in *Raziyeh Rezaifar v. Denmark*. In this case, the treaty body noted the author’s argument that “being incapable of exercising her basic economic and social rights, she may be *de facto* compelled to return to [her country of origin]”, and decided that the author’s removal from Denmark to Italy would violate the prohibition against torture and ill-treatment due to the “intolerable living conditions” in the latter country.¹⁰⁴

4.6 A RIGHT TO RECEIVE HUMANITARIAN ASSISTANCE?

The lack of humanitarian assistance in camps affects the dignity of their residents in several ways considering that they are usually individuals in vulnerable situations and unable to provide for themselves. In Burma, the government’s systematic denial of aid to Rohingya Muslims leads to the “dire humanitarian conditions” verified in camps¹⁰⁵, and women in the Dadaab camps in Kenya have engaged in prostitution as a means for guaranteeing their subsistence¹⁰⁶. Such scenarios also reveal the link between this sub-chapter and the previous one, since the provision of

¹⁰² International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 03 January 1976) 993 UNTS 3, 6 I.L.M. 368 (hereinafter ICESCR), art. 2.

¹⁰³ Amnesty International, ‘Amnesty International Report 2016/17’, at p. 171.

¹⁰⁴ *Raziyeh Rezaifar v. Denmark*, Communication No. 2512/2014, Human Rights Committee (10 March 2017).

¹⁰⁵ Human Rights Watch, Burma: Rohingya Muslims Face Humanitarian Crisis’ (26 March 2013). <<https://www.hrw.org/news/2013/03/26/burma-rohingya-muslims-face-humanitarian-crisis>> accessed 30 July 2017.

¹⁰⁶ Human Rights Watch, “Welcome to Kenya...”, at p. 79-82.

humanitarian assistance usually involves the delivery of services in areas such education, employment and health care.

Despite the considerations *supra* regarding economic and social rights, and the provision in treaty law of a general right to an adequate standard of living,¹⁰⁷ international law does not contain any explicit reference to a right to receive humanitarian assistance¹⁰⁸. Moreover, the 1951 Geneva Convention only refers to a broad obligation of States to provide “public relief” for “refugees lawfully staying in their territories”, but such notion has not been clearly defined.¹⁰⁹ In practice, most States hosting refugee camps have failed in adequately providing the delivery of vital services for residents, which is aggravated by the lack of international cooperation in this regard. Despite the current presence of almost one million of refugees in settlements in Uganda, only 18% of the funds needed by the UNHCR have been provided in the absence of support by richer countries, and testimonies indicate that meals are offered only once a day in certain camps.¹¹⁰

In international humanitarian law, there is also no provision that refers to one’s right to receive humanitarian assistance. Relief actions are subject to control by States involved in a conflict, and the related provisions refer to the “passage of humanitarian relief” rather than an actual right of the civilian population to receive or have access to such assistance.¹¹¹ Treaty law further subjects the provision of relief actions to the consent of States parties to a conflict.¹¹² In any case, one must bear in mind that the application of rules of humanitarian law is limited to the context of armed conflicts and therefore a universal definition of refugee camps would have to accommodate

¹⁰⁷ ICESCR, art. 11.

¹⁰⁸ “No binding international law instrument expressly guarantees a right to the delivery of food, medical supplies or other basic essentials”. GILBERT, G and RÜSCH, A.M. ‘Creating Safe Zones and Safe Corridors in Conflict Situations: Providing Protection at Home or Preventing the Search for Asylum?’ (2017). <http://www.kaldorcentre.unsw.edu.au/sites/default/files/Policy_brief_Creating_safe_zones_and_safe_corridors.pdf> accessed 08 July 2017, p. 1.

¹⁰⁹ According to the Commentary on the 1951 Refugee Convention, it was difficult to establish a complete enumeration of the forms of assistance that would be covered by this provision, and therefore its text was “clearly meant to be given a wide interpretation”. UNHCR Division of International Protection, ‘Commentary of the 1951 Refugee Convention: articles 2-11, 13-27’ (October 1997) <<http://www.unhcr.org/3d4ab5fb9.pdf>> accessed 28 July 2017.

¹¹⁰ Amnesty International, ‘Donors failing almost a million South Sudanese refugees in Uganda’ (19 June 2017) <<https://www.amnesty.org/en/latest/news/2017/06/donors-failing-almost-a-million-south-sudanese-refugees-in-uganda/>> accessed 04 August 2017.

¹¹¹ ICRC CIHL Rule 55.

¹¹² Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 70(1); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, art. 18(2).

such norms also to situations of peacetime, since not all States hosting refugee camps face a situation of belligerency.

The IDP Guiding Principles, on the other hand, provides a more comprehensive framework in this regard as it provides that national authorities have the “primary duty and responsibility for providing humanitarian assistance to [IDPs]”¹¹³. It also foresees that State authorities “shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.”¹¹⁴

Thus, the right to receive humanitarian assistance would be an important element in the formulation of an international definition for refugee camps considering that, in the absence of such prerogative, these settlements would not serve some of their main purposes, as stated in sub-chapter 3.1. In addition, the definition of refugee camps suggested in this paper would require the delivery of humanitarian assistance in refugee camps to be carefully managed and monitored, since the unequal distribution of basic services can be a source of tension in these forms of settlements.¹¹⁵

4.7 THE RIGHT TO SEEK ASYLUM, THE RIGHT TO LEAVE ANY COUNTRY AND *NON-REFOULEMENT*

International human rights provides for a right to seek asylum as well as the right to leave one’s country.¹¹⁶ In the context of refugee camps, the interaction of those two rights with the prohibition against *refoulement*¹¹⁷ becomes evident where host States take measures that impair the transit of refugees and asylum-seekers aiming to reach those settlements. After 2007, for instance, the closure of the Kenyan border with Somalia and of a transit center nearby has directly affected the asylum-seekers’ ability to safely reach camps where they would register their asylum

¹¹³ UNHCR, IDP Guiding Principles, Principle 25.

¹¹⁴ *Id.*

¹¹⁵ UNHCR, ‘Camp Coordination, Camp Management (CCCM)’.

¹¹⁶ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III), art. 14; ICCPR, art. 12(2).

¹¹⁷ 1951 Geneva Convention, art. 33(1); *Soering v. United Kingdom*, Appl. No. 14038/88, ECtHR (07 July 1989), §§89-91; Human Rights Committee GC31, §12; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GC IV), art. 45.

applications.¹¹⁸ Moreover, such measures exposed Somali asylum-seekers to violence, including sexual violence, killings and extortion by police forces.¹¹⁹ Border closures are also often accompanied by the application of sanctions against asylum-seekers for their illegal entry or presence¹²⁰, which is expressly prohibited by the 1951 Refugee Convention.

Therefore, the refugee camp definition proposed in this paper would include negative obligations for host States not to impede the asylum-seekers' right to seek refuge, as well as positive obligations in terms of creating safe and adequate transit conditions for them to reach refugee camps, such as the creation of sealed corridors between transit centers and refugee camps.¹²¹ Without such conditions, asylum-seekers' would not be able to enjoy their right to leave any country, as they would be impeded to travel to seek protection in another State. Furthermore, measures preventing the entry of asylum-seekers violate the *refoulement* prohibition where their rejection at borders put their lives and freedom at risk.¹²² There have been also instances where agents of receiving States have actively removed asylum-seekers back to their country of origin after intercepting them upon entry or on their way to refugee camps.¹²³

It must be pointed out that the *non-refoulement* principle is absolute and admits no derogation in international human rights law.¹²⁴ In that sense, host States would also be prohibited from removing refugees living in camps to countries where they could face "a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the [ICCPR]".¹²⁵ Adopting severe measures that would ultimately force camp residents to leave their settlements would also have to be prohibited under the definition of refugee camps here proposed. This would avoid situations such as the one in Kenya, where the government announced its decision to close the refugee settlements in Dadaab with the intention that Somali refugees returned to their home country. According to Amnesty International, this "has left open the prospect of large-scale forced returns

¹¹⁸ Human Rights Watch, "Welcome to Kenya...", at p. 14-15.

¹¹⁹ *Id.*, at p. 23.

¹²⁰ *Ibid.*, at p. 29.

¹²¹ Human Rights Watch, "Welcome to Kenya...", at p. 20.

¹²² International Law Association, 'Resolution 6/2002 on Refugee Procedures (Declaration on International Minimum Standards for Refugee Procedures)' (06 April 2002), §5.

¹²³ Human Rights Watch, "Welcome to Kenya...", at p. 40.

¹²⁴ *Chahal v. UK*, Application no. 22414/93 ECtHR (15 November 1996) ECtHR, §79.

¹²⁵ Human Rights Committee GC31, §12.

to Somalia”, and therefore would represent a violation of the *refoulement* prohibition.¹²⁶ The aforementioned order by the Kenyan government was declared null and void by the country’s High Court in early 2017¹²⁷. Nonetheless, such attempt demonstrates that a legal definition of refugee camps would have to encompass a prohibition on arbitrary measures that could result in forcible returns of refugees and asylum-seekers, such as the closures of borders or camps, interception of individuals on their way to camps, and conducts that incite discrimination and intolerance against camp residents.¹²⁸ Otherwise, host States would be in violation not only of the *non-refoulement* principle but also of the prohibition against collective expulsions.¹²⁹

With regards to IDPs residing in camps, the situation is slightly more complex since their removal from settlements usually leads to their displacement within their own country of origin.¹³⁰ Therefore, they would not fall under the scope of the *refoulement* prohibition as foreseen in international human rights law for refugees and asylum-seekers, which provides for the removal of persons ‘to another country’¹³¹. However, measures such as the forcible closure of camps may well expose IDPs to risks similar to those which led them to flee their habitual places of residence. For that reason, the definition of refugee camps here proposed advocates for the protection of the lives and freedom of IDPs based on the existing protective framework against *refoulement* for refugees and asylum-seekers. In that sense, host States would also be prevented from removing IDPs to ‘regions’ where they would face a real risk of being killed or being subjected to torture or

¹²⁶ Amnesty International, ‘Kenya: Nowhere Else to Go: Forced Returns of Somali Refugees from Dadaab Refugee Camp’ (Report), AI.Index AFR 32/5118/2016, p. 4.

¹²⁷ Al Jazeera, Kenya court quashes government order to close Dadaab (09 February 2017). <<http://www.aljazeera.com/news/2017/02/kenya-court-quashes-government-order-close-dadaab-170209101027645.html> accessed 22 July 2017.

¹²⁸ “The African Commission on Human and Peoples’ Rights (ACHPR) found that a proclamation by then-President Lasana Conté made over national radio stating that Sierra Leonean refugees should be arrested, searched and confined to refugee camps resulted in widespread violence and discrimination against Sierra Leonean refugees to such a serious degree that many were effectively forced to repatriate to Sierra Leone despite the ongoing civil war. The ACHPR held that the treatment of Sierra Leonean refugees violated the principle of non-refoulement and the Sierra Leoneans’ right to freedom from mass expulsion.” *Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Guinea*, Communication No. 249/02, African Commission on Human and Peoples’ Rights (December 2004).

¹²⁹ See Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 4; 1969 American Convention on Human Rights, art. 22(9); 1981 African Charter on Human and Peoples’ Rights, art. 12(5).

¹³⁰ Human Rights Watch, ‘Always on the Run: The Vicious Cycle of Displacement in Eastern Congo’ (Report) (04 September 2010) ISBN: 1-56432-677-2.

¹³¹ Human Rights Committee, ‘General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant’ (2004) UN Doc CCPR/C/21/Rev.1/Add.13 (hereinafter Human Rights Committee GC31), §12.

ill-treatment in the same form as precluded by the *refoulement* prohibition, with the difference that, if such removal were to be effected, that risk would materialize at the domestic level.

5 CONCLUSION

In the absence of an international binding regulation on refugee camps, in this paper I proposed elements that could contribute for the formulation of a universal definition for these forms of settlements, and I attempted to delimitate some of the host States' obligations in these contexts. After presenting the existing references with respect to refugee camps, I elaborated on further aspects that could be relevant for the construction of their legal definition. The definition I propose refers to camps as places which must retain a civilian and humanitarian character, and which are established with the purpose to provide humanitarian assistance in the form of safe living conditions and the provision of vital services. Despite recognizing that refugee camps should only be implemented as an exceptional and temporary measure, host States would have the primary responsibility for the protection of individuals therein once these settlements were established. Furthermore, eligibility as camp residents would cover refugees, asylum-seekers and IDPs, and camps would have to be located from a minimum distance from the host States' borders.

In this paper, I also attempted to delimitate a set of minimum obligations that would have to be respected by host States. In particular, I addressed the prohibition that limitations on the rights of camp residents affected core obligations, as well as the strict observance of the right to life, the prohibitions against torture and ill-treatment, the right to security of the person and freedom of movement. Moreover, I proposed a stricter respect for economic and social rights, and discussed the introduction of a right to humanitarian assistance. Finally, I addressed the relationship among the right to seek asylum, the right to leave any country and the *refoulement* prohibition, which are also relevant in the context of refugee camps. The suggestions here presented are not exhaustive, and the formulation of a universal binding regulation on refugee camps would require further and thorough elaboration. Nevertheless, this paper aimed to propose an international definition and the delimitation of States' obligations based on selected elements that could improve the protection of

camp residents in the establishment of future settlements, considering that such protection has been seriously threatened over the years in the absence of a regulation at the international level.

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